IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5631 of 2007()

SC.1081/2004 of ADDL.SUB COURT,KOLLAM
CRIME NO.976/98 OF KOLLAM EAST POLICE STATION

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PETITIONERS

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1. M.SHAJAHAN, AGED 40,
   S/O MUHAMMED ISMAIL, NOUFAL MANZIL,
   PUNTHALA, AZHANJERY, KILIKOLLUR, KOLLAM.

2. RAHMATHULLAH, AGED 38,
   S/O MUHAMMED KUNJU, VAYALIL PUTHEN VEEDU,
   BHAGAVATHIKUZHI, KILIKOLLUR,
   KOLLAM.

3. NOUSHAD, AGED 33,
   S/O SHAMSUDEEN KOYA, VAYALIL PUTHEN VEEDU,
   PUTHELATHAZHA,CHERRY, KATTAVILA,
   KILIKOLLUR, KOLLAM.

4. SHAJAHAN, AGED 36, S/O HANEEFAKUNJU,
   THADAVILA PADINJATTETHIL VEEDU,
   NEAR KATTAVILA MUSLIM MOSQUE,
   PUNTHELATHAZHA, CHERRY, KOTTANKARA,
   KOLLAM.

BY ADV. SRI.K.A.HASSAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.;JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 5631 OF 2007

Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 16, 30, 28 and 29 respectively in a Sessions Case where they face indictment for offences punishable, inter alia, under Sec.333 of the IPC and Sec.3 of P.D.P.P. Act.

2. Investigation is complete. Final report has already been filed. The case has been committed to the Court of Session. The case was registered as S.C.No.1081/04 before the learned Additional Assistant Sessions Judge, Kollam. The petitioners have not appeared before the learned Sessions Judge. Consequently, warrants of arrest have been issued against the petitioners. The petitioners find such warrants of arrest chasing them.

2. According to the learned counsel for the petitioners,

the petitioners are absolutely innocent. Their omission/failure to appear before the learned Sessions Judge was not wilful or deliberate; but was due to reasons beyond their control. They are prepared to surrender before the learned Sessions Judge and seek regular bail. But they apprehend that their applications for regular bail may not be considered by the learned Sessions Judge on merits, in accordance with law and expeditiously.

3. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioners to appear before the learned Sessions Judge and explain to the learned Sessions Judge the circumstances under which they could not earlier appear before the learned Sessions Judge. I have no reason to assume that the learned Sessions Judge would not consider the petitioners' applications for regular bail on merits, in accordance with law

and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the learned Sessions Judge and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Sessions Judge must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge